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Joint written statement* submitted by International Federation for Human Rights Leagues, Tides Center Project International Network for Economic, Social and Cultural Rights (ESCR-Net), non-governmental organizations with special consultative status

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Scope of the Legally Binding Instrument to Address Human Rights Violations Related to Business Activities

Context

In June 2014, the UN Human Rights Council (HRC) adopted Resolution 26/9 'to establish an open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights'.[1] The mandate of this open-ended intergovernmental working group (OEIWG) 'shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'.[2]

Following the development of a new OEIWG the Corporate Accountability Working Group (CAWG) of the International Network for Economic, Social and Cultural Rights (ESCR-Net), together with the International Federation for Human Rights (FIDH), launched a joint two-year project called the 'Treaty Initiative' in January 2015. An Expert Legal Group (ELG) has been established to work with civil society in all global south regions to develop legal proposals that shape and influence the content of the new UN treaty.

The treaty initiative project facilitates effective partnerships between the ELG and civil society in the process of developing these legal proposals, ensuring they incorporate the perspectives of civil society, particularly those impacted by corporate related human rights violations. Overall the aim is to promote the perspective of affected people during the treaty development process. In order to achieve that the project will hold consultations in various regions of the world in 2015 and 2016 between the ELG and representatives of civil society. Legal proposals developed from the consultations will be submitted to the OEIWG.

The first two sessions of the OEIWG 'shall be dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument'.[3] The OEIWG will have its first session during 6-10 July 2015 in Geneva.[4] Considering that the *scope* of the proposed treaty is likely to be one of the key issues debated/discussed during the first OEIWG session, this paper seeks to outline scope-related contentious aspects and develop potential options in consultation with civil society organisations (CSOs) so as to inform the OEIWG's mandate. In particular, the paper will articulate options which respond to the challenges highlighted during consultations by affected people and/or CSOs in holding companies accountable for human rights abuses[5] and what kind of the proposed international instrument could overcome those challenges.

Asia-Pacific consultation reaffirms regulatory gaps and the need for a treaty

The presentations made by CSOs and affected people, during the Asia-Pacific Consultation held in Chiang Mai (Thailand),[6] reaffirmed that voluntary and territorial regulatory initiatives often fail to encourage companies to comply

[1] Human Rights Council, 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights', A/HRC/RES/26/9 (26 June 2014), para. 1, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement.

[2] Ibid.

[3] Ibid, para. 2.

[4] Human Rights Council, 'First session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights', http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/Session1.aspx.

[5] The consultations with CSOs and affected people are being organised by the project co-ordinators, ESCR-Net and FIDH. The first regional consultation for the Asia-Pacific was held in Chiang Mai during 1-3 May 2015 (the regional consultations for Africa and Latina America are planned for October 2015 and early 2016, respectively). The Chiang Mai consultation was followed by a Skype consultation – specific to issues related to the treaty's scope – with selected CSO representatives on 8 June 2015.

[6] ESCR-Net and FIDH, 'First regional consultation in Thailand, FIDH and ESCR-Net Treaty Initiative', 21 May 2015, http://www.escr-net.org/node/365947.

with their human rights responsibilities.[7] For example, in the Philippines, it is the government which is using a special paramilitary unit – Investment Defence Force – to secure large-scale development projects against resistance by displaced indigenous people.[8] On the other hand, in Bangladesh, two years after the Rana Plaza collapse, garment workers continue to experience intimidation for exercising their right to collective bargaining.[9]

CSOs also highlighted several challenges that they experienced in holding companies accountable for breaching human rights, e.g., lack of access to information (including about parent-subsidiary relations); unviable plans for relocation of project-displaced people; judicial process being long, expansive and prone to corruption; corporate influence over politics; international financial institutions pressuring states to create business-conducive environment; inadequate compensation to those affected; lack of transparency in state allocation of corporate contracts/licenses; intimidation and suppression of human rights defenders; green washing; lack of adequate environment impact assessment guidelines; complex corporate structures; corruption and conflict of interest; lack of legal aid; non-compliance with the 'free, prior and informed consent' principle.[10]

On account of these regulatory gaps and governance challenges, in a post- consultation Unity Statement, several CSO 'demand[ed] an end to the human rights violations perpetrated with impunity by TNCs and other business entities, often with the complicity or inaction of States'.[11] These CSOs also demanded that their governments 'protect, respect and fulfil human rights and commit to enact effective laws for corporate accountability' and 'actively participate in the development of a legally binding treaty on business and human rights in the UN Human Rights Council'.[12]

Twin scope-related aspects

There are two aspects related to the scope of the treaty: the types of companies to which the treaty should apply (the 'depth' question) and the types of human rights[13] that the treaty should cover (the 'breadth' question).

The twin scope-related aspects have a direct relation to the need for a treaty as a response to the inability of exiting regulatory initiatives, including the UN Guiding Principles on Business and Human Rights (GPs),[14] to fill governance gaps in the area of business and human rights.[15] In addition to challenges highlighted above, the GPs may, in particular, fail to enhance the regulatory efficacy in "hard cases", that is, situations in which a company sees no clear business case for complying with its human rights responsibilities and/or in circumstances in which states are unable or unwilling to regulate effectively the activities of private actors.[16]

The depth question revolves around the somewhat controversial 'footnote' in the HRC resolution, which reads: '"Other business enterprises" denotes all business enterprises that have a transnational character in their operational activities,

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[7] ESCR-Net and FIDH, 'Shaping the treaty on business and human rights: views from Asia and the Pacific', 11 May 2015, http://www.escr-net.org/node/365922.

[8] Ibid. See also Human Rights without Frontiers et al., *Police in the Pay of Mining Companies: The Responsibility of Switzerland and Peru for Human Rights Violations in Mining Disputes* (December 2013).

[9] Ibid. See also Human Rights Watch, 'Bangladesh: 2 Years After Rana Plaza, Workers Denied Rights', 22 April 2015, http://www.hrw.org/news/2015/04/22/bangladesh-2-years-after-rana-plaza-workers-denied-rights.

[10] Author's personal notes taken during the Chiang Mai consultation.

[11] APWLD, 'Unity Statement: Asia Pacific Civil Society's Demands for the Legally Binding Treaty on Business and Human Rights', 19 June 2015, http://apwld.org/unity-statement-asia-pacific-civil-societys-demands-for-the-legally-binding-treaty-on-business-and-human-rights/.

[12] Ibid.

[13] For the purpose of this paper, the term 'human rights' is taken in a wider sense so as to include not only human rights, labour rights and environmental rights but also the specific rights of vulnerable sections of society such as women, children and indigenous people.

[14] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011).

[15] See, for example, FIDH, 'Briefing Paper on Business and Human Rights: Enhancing Standards and Ensuring Redress' (March 2014).

[16] For an analysis, see Surya Deva, 'Multinationals, Human Rights and International Law: Time to Move beyond the 'State-Centric' Conception?' Jernej Letnar Černič and Tara Van Ho (eds.), *Direct Human Rights Obligations of Corporations* (The Hague: Wolf Legal Publishers, 2015) 27, 31-36.

and does not apply to local businesses registered in terms of relevant domestic law.'[17] Irrespective of the merit of this footnote analysed below, it should be noted that the footnote language is conceptually ambiguous. For example, if 'other business enterprises' include entities with a 'transnational character', should they be not already covered within the definition of TNCs? Moreover, all companies – even TNCs – are registered under domestic law of some country. One should keep in mind that any attempt to define TNCs is likely to prove very difficult, because an entity could be considered 'transnational' in view of multiple alternative variables (e.g., shareholding, operations, business relations, location of offices, nationality of shareholders and directors).

The proposal for the treaty not applying to domestic businesses is rooted in the belief – held by many states in the Global South as well as by the states supporting the resolution – that a legally binding international instrument is required only to deal with business enterprises which operate at a transnational level. Developing countries may also be apprehensive that if the treaty applied to all types of business enterprises, their local/small scale companies might be subjected to heavy burden flowing from international human rights norms. On the other hand, many other states (mostly developed countries from the Global North) oppose the idea of any future treaty being limited to transnational corporations (TNCs): they think that doing so will not only put their TNCs at an economic disadvantage but will also be infeasible in terms of practical implementation.

The breadth question is reflective of the debate about whether the treaty should be limited to 'gross' human rights violation or not. The debate here is underpinned by an *aspirational* desire to put in place a treaty which covers all civil, political, social, economic and cultural human rights and the *political feasibility* of negotiating a narrower set of treaty on which it might be easier to build consensus. The debate is also reflective of the historical divide between civil and political rights on the one hand (which have traditionally been given priority by the Global North) and the social, economic and cultural rights on the other (which have been accorded more importance by the Global South).

Potential options related to the treaty's depth

There are three broad options on how to deal with the depth issue concerning the proposed treaty:

A. Strictly follow the HRC resolution's footnote focus and merely focus on the activities of TNC and other business enterprises with operations of a transnational character.

This option, which will exclude domestic business enterprises from the purview of the treaty, may sound tempting for developing countries in that it would give them leverage against powerful TNCs, while at the same time not subject their small-scale local companies to legally binding international human rights norms. However, this option will be a non-starter from the perspective of developed countries.

From the perspective of those whose human rights are impacted by corporations it will be ideal that the treaty applies to all types of companies. It is a myth to believe that all states could regulate effectively the activities of their domestic companies, or that no human rights standards are required to guide the behaviour of local business enterprises. The fire that killed 72 workers in a Kentex manufacturing factory in the Philippines exposes these myths.[18] It should also be kept in mind that whatever definition of 'TNCs' is agreed upon, lawyers should be able to advise companies on restructuring their business in such a way that their operations are not captured by the treaty.

During the Skype consultation with selected CSOs, a reference was made to the Unity Statement and the need for a treaty to apply to TNCs or the overseas parent companies of local companies, as national laws already exist to regulate domestic companies.[19] However, after some discussion, there was a broad consensus to go for Option B or C, outlined below.

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[17] Note 1, footnote 1.

[18] Irene Pietropaoli, 'Philippines Factory Fire: 72 Workers Need not have Died', *The Guardian*, 8 June 2015, http://www.theguardian.com/global-development-professionals-network/2015/jun/08/philippines-factory-fire-72-workers-unions-human-rights.

[19] 'Notes from Civil Society Consultation with Surya Deva (ELG Member) on the Potential Scope of the Treaty, 8 June 2015', on file with the author.

B. Try to negotiate a treaty which applies to all types of companies. This option could be achieved by contending that the 'scope' of the treaty under the HRC resolution remains an open question,[20] especially because the footnote rider does not appear in the main text of the resolution.
This option may help in bringing developed countries to the treaty negotiation table and in turn build a consensus for the treaty. As noted above, this option should be beneficial for affected people as well. The sentiments expressed in Chiang Mai Unity Statement – i.e., the demand for adopting 'an expansive definition of transnational corporations which encompasses parent companies, subsidiaries and contractors and ensures comprehensive supply chain accountability'[21] – will be closer to this option than Option A.

C. A hybrid option which may bridge the divide between two camps may be to draft a treaty that applies to all companies, but have certain special provisions to deal with TNCs as more difficult regulatory targets.[22] Such special provisions may, for example, relate to stipulating provisions about mutual assistance in investigating violations and in enforcing judgments; explicitly obligating states to regulate corporate conduct extraterritorially; providing rules to govern the liability of parent companies for human rights abuses committed by subsidiaries; providing for rules to limit the corporate misuse of the doctrine of *forum non conveniens*.

Under international law, all of the above options are feasible. It appears, however, that the increasing trend in the 21st century is more towards adopting an instrument which applies to all types of companies, rather than merely TNCs. For example, the 1976 OECD Guidelines for Multinational Enterprises applied to 'multinational enterprises' operating in the territories of OECD countries.[23] The 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises was similarly limited to 'multinational enterprises' *operating in* the territories of OECD countries.[24] However, after the revision of both these instruments in 2000, their scope was extended to other enterprise too.[25] For instance, the 2000 version of the OECD Guidelines applied to multinational enterprises "*operating* in or *from*" the territories of OECD countries.[26] The UN Guiding Principles on Business and Human Rights in 2011 took the final step forward by abolishing the distinction between TNCs and other business enterprises and posited that all companies have a responsibility to respect human rights.

Potential options related to the treaty's breadth

In relation to the breadth of the proposed treaty, there may be at least three options:

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[20] The resolution reads that "first two sessions of the open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises shall be dedicated to *conducting constructive deliberations on* the content, *scope*, nature and form *of the future international instrument*, in this regard". Note 1, para. 2 (emphasis added).

[21] APWLD, 'Unity Statement', note 11. This is confirmed further by the statement demanding 'accountability for the direct, indirect, short-term and long-term impacts of corporate activity, including remote, "down-stream", or cumulative negative impacts'. Ibid.

[22] Beth Stephens, 'Corporate Liability: Enforcing Human Rights Through Domestic Litigation' (2001) 24 *Hastings International & Comparative Law Review* 401.

[23] OECD Declaration on International Investment and Multinational Enterprises, 21 June 1976, reprinted in 1976, *ILM*, vol. 15, 967 at 968. Para 8 of the Guidelines provided a definition of 'multinational enterprises'. Ibid at 971.

[24] ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, 16 November 1977, reprinted in 1978, *ILM*, vol. 17, 422 at 423.

[25] Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (London: Routledge, 2012), 80, 90.

[26] OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts, DAFE/IME(2000)20, 8 November 2000, p. 5 (para I). In the same vein, the 2000 version of the ILO Declaration provided that the 'principles laid down in the Declaration do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, November 2000, para. 11.

A. In the first instance, limit the scope of the treaty to gross human rights abuses. Ruggie, for instance, is in favour of binding regulation only to target 'gross violations' with 'precision tools'.[27]

As there is no definite certainty or consensus yet on what the term "gross"' means,[28] there is some leeway to interpret the term in a manner which is broader than, say, the four crimes covered by the ICC Rome Statute[29] or even broader than the territory occupied by international corporate crimes.[30] It is arguable that a number of factors – such as the character of the right, the magnitude of the violation, the type of person affected (vulnerability), and the impact of the violation – may determine what violations are regarded 'serious' under international human rights law.[31] Bassiouni noted that 'the term "gross violations of human rights" has been employed in the United Nations context not to denote a particular category of human rights violations per se, but rather to describe situations involving human rights violations by referring to the manner in which the violations may have been committed or to their severity'.[32]

It is also worth noting that the 1993 Vienna World Conference on Human Rights Declaration stated that gross and systematic violations include 'torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.' [33]

Although the term 'gross' is susceptible to a broad interpretation, it is really doubtful whether proponents of this option have such a wide interpretation in mind, because it would be easier to build consensus only if gross human rights violations are defined narrowly. However, from the perspective of those whose human rights are impacted by corporations the option of such a narrow treaty will not be very helpful, unless states agree to negotiate additional instruments in specific areas on a continuous basis.

B. Extend the scope of the proposed treaty to all 'core' international human rights conventions/instruments.[34] This list would be wider than the 'core' list of internationally recognised human rights that the UN Guiding Principles on Business and Human Rights recommend companies to follow 'at a minimum'.[35]

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27 John Ruggie, 'Life in the Global Public Domain: Response to Commentaries on the UN Guiding Principles and the Proposed Treaty on Business and Human Rights' (January 23, 2015), p. 5, http://ssrn.com/abstract=2554726.

28 See Jenifer Zerk, 'Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies', A report prepared for the Office of the UN High Commissioner for Human Rights, 25-28 (2014), http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticeLawRemedies.pdf. Although Ruggie moots the idea of a carefully crafted legal instrument that deals with 'worst' human rights abuses, he does not elaborate clearly what these rights are. John Ruggie, *Just Business* (New York: Norton, 2013), 200. On another occasion, he mentioned that international crimes such as 'genocide, extrajudicial killings, and slavery or slavery-like practices' are obvious candidates for such a category. John Ruggie, 'A UN Business and Human Rights Treaty? An Issue Brief' (28 January 2014), p. 5, http://business-humanrights.org/media/documents/ruggie-on-un-business-human-rights-treaty-jan-2014.pdf.

29 The ICC Rome Statute covers four international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.

30 See Anita Ramasastry and Robert C Thompson, *Commerce, Crime, and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law – A Survey of Sixteen Countries* (FAFO, 2006); James Stewart, 'The Turn to Corporate Criminal Liability for International Crimes: Transcending the Alien Tort Statue' (2014) 47 *New York University Journal of International Law and Politics* 1.

31 Geneva Academy, 'What amounts to "a serious violation of international human rights law"?' (September 2014), p. 5, http://www.geneva-academy.ch/docs/publications/Briefings%20and%20In%20breifs/Briefing%206%20What%20is%20a%20serious%20violation%20of%20human%20rights%20law_Academy%20Briefing%20No%206.pdf.

32 'Report of the Independent Expert on the Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms, Mr M. Cherif Bassiouni, submitted pursuant to Commission on Human Rights Resolution 1998/43', para. 85.

33 Vienna Declaration and Programme of Action, World Conference on Human Rights, 1993, para. 30.

34 OHCHR, 'The Core International Human Rights Instruments and their Monitoring Bodies', http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

35 Commentary to Principle 12 reads: 'An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the

In terms of filling in governance gaps and strengthening corporate accountability, this option will superior to Option A. Nevertheless, even this option may not fully satisfy the needs of CSOs or affected people, because the 'core' international human rights instruments will not include labour rights, environmental rights or the rights of indigenous people for that matter.[36] In fact, CSOs in the Chiang Mai Unity Statement stressed that there should be 'no regression from existing international human rights standards, including core ILO Conventions' and that 'provisions recognizing the right of indigenous peoples to free, prior, and informed consent' should be included.[37] Having said this, it should be acknowledged that accomplishing Option B will be quite difficult given the divisions and differences of opinion amongst states. Some may also contend that labour rights should continue to be dealt with by the ILO framework or that certain rights which have not yet been recognised in legally binding international conventions should not be included in the proposed treaty.

C. Have an open-ended organic scope encompassing 'all' international human rights conventions/instruments, not merely the *existing* ones but also those that might evolve in *future*. This slightly unconventional option may be operationalised by stipulating in an Annexure to the treaty all the human rights instruments applicable to companies.

This option may be justified normatively: we do not need to renegotiate afresh human 'rights' for the non-state actors; rather what we need to agree upon is 'obligations' with references to whatever rights are recognised in relation to states. This option will also be consistent with the practical reality in which companies could (and do) violate almost all human rights, directly or indirectly. During the Skype consultation, some CSOs supported this option over Option B, as the latter option may not be able to capture all the interests of people affected by corporate activities.[38]

Whichever of the above option is selected, the OPIWG would have to make another drafting choice. The treaty may follow the 'reference model' and prescribe the human rights obligations of companies with reference to state-focal international human rights instrument (e.g., by listing them in an Annexure to the treaty). Alternatively, the proposed treaty may adopt the 'enumeration model' and outline the precise human rights obligations of companies after suitable modifications if any.[39] While the reference model is definitely easier, it might not provide companies enough guidance, as it is difficult to transplant the state-centric text of certain human rights provisions to the private actors. The enumeration model is likely to prove very contentious in negotiating the exact obligations of companies. A solution may, therefore, lie in laying down some general principles with reference to which companies could deduce their human rights obligations in relation to state-centric international instruments.

Recommendations for the OEIWG

Considering the initial consultation with CSOs and views of other members of the ESCR-Net/FIDH's Expert Legal Group, I propose that from the perspective of affected people the treaty should apply to all types of companies and cover the full range of interrelated, interdependent and indivisible human rights (i.e., civil, political, social, economic, and cultural).

If it is irrelevant whether the violator of a human right is a state agency or a non-state actor, why should the distinction based on the territorial operations of a company matter? The proposed international instrument should, therefore, apply to all types of business enterprises.[40] Making a distinction between TNCs and other business enterprises with domestic

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main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work.' Guiding Principles, note 14.

[36] During the Skype consultation, it was reiterated that the core ILO Conventions as well as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) should be included in the scope of the proposed treaty. 'Notes from Civil Society Consultation with Surya Deva (ELG Member)', on file with the author.

[37] APWLD, 'Unity Statement', note 11.

[38] Ibid.

[39] A combination of these models may also be adopted, e.g., the 2003 UN Norms.

[40] Ruggie rightly notes that 'the corporate form of the abuser is irrelevant' for those impacted by corporate activities. John Ruggie, 'Quo Vadis? Unsolicited Advice to Business and Human Rights Treaty Sponsors',

operations will, in fact, offend the principle of non-discrimination. Moreover, any attempt to limit its scope by providing a definition of targeted corporations will inevitably result in lawyers advising enterprises how to bypass the given definitional contours.[41] Having said this, even if the treaty applies to all companies, it may include special provisions, as outlined above, to deal with TNCs as more difficult regulatory targets.

If the treaty is applicable only to 'gross' human rights violations – even if the term is defined somewhat broadly – it might not cover a great majority of human rights abuses committed by companies all over the world. Why should the proposed international treaty exclude access to remedies for those affected by the Rana Plaza building collapse or the Bhopal gas disaster for that matter? In fact, it is arguable that calls for negotiating a narrow treaty that deals only with gross/egregious abuses is reflective, among others, of the Global North's prioritisation of civil and political rights over social, economic and cultural rights.[42] For people living in the Global South – who suffer disproportionately due to corporate-related human rights abuses – the latter set of rights are equally, if not more, important. Why should the displacement of indigenous people for mining, emission of (and/or exposure to) hazardous chemicals, compulsory pre-employment pregnancy testing of women and illegitimate land grabs by companies be taken less seriously than slavery or genocide?

In short, the treaty should ideally be *deep* and *wide* rather than 'shallow and narrow'. Most of the legal, political or practical problems that scholars[43] and states have flagged in negotiating a legally dinging treaty could be overcome.[44] Kyriakakis aptly sums it: 'If complexity, farsightedness, and tackling politically difficult subjects were reasons not to try, then, for all their flaws, we would have no international criminal justice or international human rights system at all.'[45]

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http://www.ihrb.org/commentary/quo-vadis-unsolicited-advice-business.html. Darcy also argues that a focus on TNCs might be too narrow. Shane Darcy, 'A new business and human rights instrument?', p. 6, https://businesshumanrightsireland.wordpress.com/2015/04/13/key-issues-in-the-debate-on-a-binding-business-and-human-rights-instrument/.

[41] Surya Deva, 'Corporate Human Rights Abuses and International Law: Brief Comments', (28 January 2015), http://jamesgstewart.com/corporate-human-rights-abuses-and-international-law-brief-comments/.

[42] Ibid.

[43] Ruggie, 'An Issue Brief'; John Ruggie, 'Quo Vadis?', note 40.

[44] See David Bilchitz, 'The Necessity for a Business and Human Rights Treaty', 30 November 2014, http://ssrn.com/abstract=2562760; Surya Deva, 'The Human Rights Obligations of Business: Reimagining the Treaty Business', 12 March 2014, http://business-humanrights.org/sites/default/files/media/documents/reimagine_int_law_for_bhr.pdf.

[45] Joanna Kyriakakis, 'The Debate about having a debate about a business and human rights treaty', 17 February 2015, http://castancentre.com/2015/02/17/debateaboutbusinessandhumanrights/.